

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, September 10, 2008, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Walter Schmidt
Ray Dwyer
Tom Day
Rob Schuett

BOARD MEMBERS ABSENT: Robert Bartholomew

SECRETARY TO THE BOARD: Peggy Tilley

OTHERS PRESENT: Town of Merton Board of Adjustment
Jerry Klingbeil, BA08:057, owner
Lawrence Babb, BA08:052, agent
Martin & Carol Leonard, BA08:052, owners
Anthony & Sue Wineinger, BA08:056, owners
Rick Dahl, BA08:055, owner
Randy Dahl, BA08:055, owner
Robert Dahl, BA08:055, owner
Steve Barnekow, BA08:056, neighbor
Ronda Heppe-Arndorfer, BA08:053, owner
Frank Arndorfer, BA08:053, owner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Dwyer *I make a motion to approve the Summary of the Meeting of August 27, 2008.*

The motion was seconded by Mr. Day and carried with four yes votes. Mr. Schuett abstained.

NEW BUSINESS:

BA08:053 RONDA HEPPE:

Mr. Schmidt *I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the road setback and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the replacement of the existing deck on the property subject to the following conditions:

1. The deck shall be replaced in the same location and in the same size as the existing deck.
2. The deck shall not be enclosed or covered.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request as conditioned, will allow the reconstruction of an existing deck in the same size and location as the existing deck. The deck is located approximately 22 ft. from the road right-of-way, approximately 32 ft. from the pavement of the road, more than 75 ft. from the shore and is across the road from and approximately 2 ft. to 4 ft. above the floodplain. Therefore, approval of this request will not be contrary to the public interest and will be within the purpose and intent of the Ordinance.

BA08:057 JERROLD L. KLINGBEIL:

Mr. Dwyer

*I make a motion to **approve** the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the road setback, offset, and open space requirements of the Waukesha County Zoning Code as well as **approval** of the request for a special exception from the accessory building floor area ratio requirements of the Waukesha County Zoning Code to allow the construction of a new detached garage subject to the following conditions:

1. The detached garage shall not exceed 22 ft. by 22 ft. (484 sq. ft.) in size as proposed.
2. A "Preliminary Site Evaluation" of the proposed garage and the septic system must be conducted by the Environmental Health Division. Prior to the issuance of a Zoning Permit, evidence must be submitted to the Planning and Zoning Division staff that the Environmental Health Division has no objection to the proposed garage, and that it meets all required minimum separation distances and would not have an adverse effect on the operation of the private waste disposal system. If that cannot be done, a Sanitary Permit for a new waste disposal system must be issued, and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
3. The proposed garage must be located at least 13 ft. from the road right-of-way of Tytherleigh Street, 10 ft. from the residence, 16 ft. from the south lot line, and 20 ft. from the east lot line, as measured to the outer edges of the walls, provided the overhangs do not exceed two

- (2) ft. in width. If the overhangs exceed two (2) ft. in width, the garage must be located so that the outer edges of the overhangs conform with the offset/setback requirements.
4. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
 5. The garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 15 ft.
 6. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed garage, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
 7. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the survey required in Condition No. 6.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the construction of a new detached garage on the subject property. The proposed garage will be in a more conforming location than the existing garage which is located partially within the road right-of-way. The proposed garage will meet the road setback requirement from the heavily traveled Hwy 83 and will be located approximately 13 ft. from the lightly traveled Tytherleigh Street. Although the proposed garage will not meet the offset requirement from the south lot line, the adjacent property to the south is owned by the Town of Genesee and currently contains a parking lot immediately adjacent to the subject property. Due to the size of the lot, no structure could be constructed without the need for an open space variance. The proposed garage will only slightly decrease the amount of open space on the property and will be reasonably sized for the lot. The property will conform with the total floor area ratio requirements of the Ordinance. Therefore, the approval of this request will not be contrary to the public interest and will be within the purpose and intent of the Ordinance.

BA08:052 MARTIN AND CAROL LEONARD TRUST (OWNERS) LAWRENCE BABBS (AGENT):

Mr. Ward

I make a motion for denial of the request for variances from the road setback and offset requirements but approval the request for variances from the floodplain setback, floor area ratio and open space requirements of the Ordinance, as well as the approval of the request for a special exception from the minimum floor area requirements of the Ordinance, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report with the following modifications:

Condition No. 8 shall be modified to read as follows: No new retaining walls are proposed nor permitted herein. Any proposed retaining walls must comply with all Ordinance requirements.

Condition No. 4 shall be modified to read as follows: The proposed residence and attached garage must comply with the road setback, offset, shore and floodplain setback requirements of the Ordinance, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements. The deck shall be located a minimum of 44 ft. from the floodplain to allow a maximum deck depth not to exceed 10 ft. The basement patio below the deck shall be located a minimum of 42 ft. from the floodplain.

The reasons for the decision shall be modified to read as follows: The location and dimensions of the proposed residence can be moved lakeward to bring it into compliance with the road setback, offset, and floodplain setback requirements of the Ordinance. Without these variances, there will still be a reasonable building envelope on the property for the construction of a residence. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances from the road setback, offset and floodplain setback requirements of the Ordinance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The deck and basement patio will be located approximately 30 ft. above the 100-year floodplain and the approval of the floodplain setback variance for the deck and patio would be in conformance with the spirit and intent of the Ordinance.

Due to the limitations of the lot it is reasonable to grant a variance from the minimum floor area requirement to allow a smaller first floor of the residence. The proposed residence will still comply with the total minimum floor area requirements of the Ordinance. Furthermore, due to the size of the lot, no structure could be constructed on the property without the need for a variance from the open space requirements. The approval of this request, as conditioned, will allow the construction of a residence that will be reasonably sized for the lot and for the surrounding neighborhood. Therefore, the approval of this request, as conditioned, will be within the purpose and intent of the Ordinance.

The motion was seconded by Mr. Schmidt and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for variances from the road setback, offset, and floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance but **approval** of the request for variances from the floor area ratio and open space requirements of the Ordinance, as well as **approval** of the request for a special exception from the minimum floor area requirements of the Ordinance to allow the construction of a new single-family residence with an attached garage and a deck on the property, subject to the following conditions:

1. The footprint of the proposed residence and attached garage including any covered decks, covered patios, and/or covered porches, shall not exceed 1,287 sq. ft. as proposed. There must be an attached garage of at least 400 sq. ft. in size.
2. The total floor area ratio on the property including the first and second floors (not including the basement level), attached garage, any covered decks, covered patios, and/or covered porches, and shall not exceed 22.01% (1,972 sq. ft.).
3. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
4. The proposed residence, attached garage and decking must comply with the road setback, offset, shore and floodplain setback requirements of the Ordinance, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements.
5. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

6. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence, attached garage, and decking, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The Plat of Survey must show the location of the 100-year floodplain and the Ordinary High Water Mark of the lake as established by the Wisconsin Department of Natural Resources.
7. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No. 6.
8. No retaining walls are proposed nor permitted herein. Any proposed retaining walls must comply with all Ordinance requirements.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The location and dimensions of the proposed residence can be moved lakeward and the deck can be modified to bring the proposed residence into compliance with the road setback, offset, and floodplain setback requirements of the Ordinance. Without these variances, there will still be a reasonable building envelope on the property for the construction of a residence. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances from the road setback, offset and floodplain setback requirements of the Ordinance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

Due to the limitations of the lot it is reasonable to grant a variance from the minimum floor area requirement to allow a smaller first floor of the residence. The proposed residence will still comply with the total minimum floor area requirements of the Ordinance. Furthermore, due to the size of the lot, no structure could be constructed on the property without the need for a variance from the open space requirements. The approval of this request, as conditioned, will allow the construction of a residence that will comply with all of the locational requirements of the Ordinance and will be reasonably sized for the lot and for the surrounding neighborhood. Therefore, the approval of this request, as conditioned, will be within the purpose and intent of the Ordinance.

BA08:055 RICHARD, ROBERT AND RANDY DAHL (OWNERS) RANDY DAHL (AGENT):

Mr. Dwyer

I make a motion to approve the request, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the road setback, floodplain setback, floor area ratio and open space requirements of the Ordinance to allow the construction of a new single family residence with attached garage, deck and covered porch on the property, subject to the following conditions:

1. The footprint of the proposed residence and attached garage including any covered decks, covered patios, and/or covered porches, shall not exceed 1,600 sq. ft. in size. There must be an attached garage of at least 400 sq. ft. in size and a first floor of at least 900 sq. ft. in size.
2. The total floor area ratio on the property including the first and second floors, attached garage, any covered decks, covered patios, and/or covered porches, and shall not exceed 19.5% (approximately 2,178 sq. ft.).
3. The proposed residence shall not have a basement or a crawl space.
4. Prior to the issuance of a Zoning Permit, a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
5. The proposed residence, attached garage, porches, and decking must be located at least 20 ft. from the road right-of-way of Lakeview Lane and 20 ft. from the 100-year floodplain, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements.
6. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out locations of the proposed residence, attached garage, and decking, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. The Plat of Survey must show the location of the 100-year floodplain and the Ordinary High Water Mark of the lake as determined by the Wisconsin Department of Natural Resources.
8. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the

issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This Grading and Drainage Plan may be combined with the Plat of Survey required in Condition No.7.

9. No retaining walls are proposed nor permitted herein. Any proposed retaining walls must comply with all Ordinance requirements.
10. The first floor of the structure shall be placed a minimum of two feet above the floodplain elevation.
11. No change in the existing topography or drainage courses on any land will be allowed which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. Further, no fill or alterations will be permitted under any circumstances, which will alter the drainage or topography in a way that will adversely affect the surrounding lands. No grading or filling activities will be permitted within the floodplain.
12. Upon completion of the foundations of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Merton Building Inspector and the Waukesha County Department of Parks and Land Use - Planning and Zoning Division Staff, prior to proceeding with construction.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request will allow the construction of a residence which is reasonably sized and in keeping with the character of the neighborhood. Without variances from the road setback and floodplain setback requirements of the Ordinance, the property would only be allowed a building envelope that is approximately 14.3 ft. deep. The road setback and floodplain setback restrictions imposed, as conditioned, will provide the amount of relief necessary to allow a reasonably sized building envelope of approximately 50 ft. by 48 ft. (2,400 sq. ft.). This will allow enough room for a residence to be constructed with a footprint not to exceed 1,600 sq. ft. in size while allowing some room for design modifications. The size of the lot makes it impossible for any structure to be constructed on the property without an open space variance. However, limitations on the footprint of the structure are important to provide as much open space as possible on the property and to limit the impact on the floodplain.

A total floor area ratio of 19.5% will permit the residence to be approximately 2,178 sq. ft. in size. If the property were to be served by sewer then the residence would conform to the floor area ratio requirements. Because the residence will not have a basement, an increase in the allowable floor area ratio from the 15% maximum will allow for additional storage or

garage space to be added to the house design. The approval of this request, as conditioned, will allow the construction of a residence that will be reasonably sized for the lot and for the surrounding neighborhood. Therefore, the approval of this request, as conditioned, will be within the purpose and intent of the Ordinance.

BA08:056 ANTHONY WINEINGER:

Mr. Schmidt

*I make a motion for **approval** of the request for an after-the fact variance from the floodplain setback requirements of the Ordinance to allow the deck to remain, **approval** of the request for after-the-fact variances from the floodplain setback, and floor area ratio requirements, and **approval** of a special exception from the accessory building floor area ratio to allow the permanent staircase on the detached garage to remain subject to the following conditions and for the following reasons:*

Condition No. 1 shall read as follows: A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating that the upper level of the 23 ft. by 25 ft. detached garage shall be used for personal storage only and cannot ever be converted to living quarters. The Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.

Condition No. 2 shall read as follows: The total accessory building floor area ratio on the property shall not exceed 6.5% and the total floor area ratio on the property shall not exceed 17.1%.

The reasons for the decision are as follows: The replacement of the deck was primarily to repair it as opposed to constructing a new deck and the deck, as constructed, is aesthetically pleasing. The uniqueness of land causes a hardship because no basement can be constructed under the residence due to the floodplain. Therefore, there is a need for additional storage space on the property. The approval of this request will not be contrary to the public interest and will be with the purpose and intent of the Ordinance.

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the requested after-the-fact variance from the floodplain setback requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the deck to remain and **denial** of the requested after-the-fact variances from the floodplain setback, floor area ratio and accessory building floor area ratio requirements of the Waukesha County Shoreland and Floodland Protection Ordinance for the permanent staircase on the detached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

DECK: It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Furthermore, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property and only to accommodate physical limitations on a property that prevent a reasonable use of the property; not to accommodate the personal preferences or needs of the current property owner. The property can be used for a permitted purpose without the need for this large deck 0 feet from the floodplain. The owner can construct stairs from the existing doorway for access down to the yard instead of constructing a large deck this close to the floodplain. The construction of any accessory structure, such as this deck, is not necessary to provide a reasonable use of any residential property. There are also no unique property features specific to this site to justify the granting of the requested variances. In addition, the fact that the deck is already reconstructed is a self-created hardship and does not justify the granting of a variance. Finally, it would be contrary to the public interest to grant the requested variances for the floodplain setback for an accessory structure such as a deck. The approval of this request would not be within the purpose and intent of the Ordinance. Please note that a denial means that the deck must be removed.

STAIRS: The owners are able to utilize the property for the permitted single-family residential use without the approval of the requested after-the-fact variances for the permanent staircase on the detached garage. The Board's 2005 variance granted a reasonable use of this property and the Board's decision specifically stated that a larger garage was not warranted to provide reasonable use. Furthermore, the Board also determined that a floor area ratio variance was also not justified on this property and not within the purpose and intent of the Ordinance. The previously approved garage already required multiple variances for its construction and additional variances are not justified as nothing has changed from what was known of the property in 2005. The property owners had 3,638 sq. ft. of living and storage space (not including the storage area over the second garage that was to be accessed by pull-down stairs only). This is much more space than many lake residents enjoy. Furthermore, although the permanent staircase only encroaches an additional five feet towards the floodplain, allowing structures to continue encroaching into the minimum 30 ft. floodplain setback does have a cumulative negative effect on both the resources in the area and adjacent landowners. It has not been demonstrated, as required for a variance, that denial of the requested variances for the staircase would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The request does not meet any of the legal standards for the granting of a variance and therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance. Please note that a denial means the staircase must be removed. Any hardship this places on the property owner is self created.

OTHER ITEMS REQUIRING BOARD ACTION:

BA06:056 DAWN OLSON KNAPP

Mr. Schmidt

*I make a motion to **approve** the request for a six month extension, in accordance with the Staff's recommendation, as stated in the Staff Memorandum and for the reasons stated in the Staff Memorandum.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was to **grant** the extension for a period of 6 months.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The deadline just passed a few weeks ago and the owners plan to obtain the Zoning Permit and begin construction as soon as possible. If a new variance was applied for, it is highly likely that the variances would be approved per the original decision as the Ordinance has not changed since the original decision. Therefore, allowing the extension would be within the purpose and intent of the Ordinance and of the original decision of the Board.

ADJOURNMENT:

Mr. Dwyer

I make a motion to adjourn this meeting at 10:18 p.m.

The motion was seconded by Mr. Schuett and carried unanimously.

Respectfully submitted,

Peggy S. Tilley
Secretary, Board of Adjustment